ORGANIZATIONAL CONFLICT OF INTEREST

12 May 2004

Purpose of Briefing

To present the SMC policy implementing the Federal Acquisition Regulation (FAR) regarding organizational conflict of interest (OCI)

SMC Contracting Directive and Buyers Guide has been updated

There is an OCI Mitigation Check list available

What Is OCI?

Organizational Conflict of Interest means that because of other activities or relationships, a contractor:

- Is potentially unable to render impartial advice to the Government; or
- Might have impaired objectivity in performing the contract work; or
- Has an unfair competitive advantage.

Unfair Competitive Advantage

An **Unfair Competitive Advantage** exists when a contractor competing for a contract award possesses:

- Proprietary information obtained without proper authorization
- Source selection information that is not available to all competitors, and such information would assist that contractor in obtaining the contract award

Contracting Officer Responsibilities

- Identify and evaluate potential OCI issues as early as possible in the acquisition process
- Avoid, neutralize, or mitigate OCI situations before contract award

General Rules

- Prevent the existence of conflicting roles that might bias a contractor's judgment
- Prevent an unfair competitive advantage

  An unfair competitive advantage exists when a contractor competing for award possesses:

  - Proprietary information and/or
  - Source selection information that is not available to all contractors when such information would assist that contractor in obtaining the contract award

Recurring OCI Situations

- SETA contractors who develop system requirements when their company will compete for a contract related to those requirements
  - Potential for unfair competitive advantage
- SETA contractors who support source selection activities when some other part of their company is bidding on the contract
  - Potential for biased judgment
  - Potential for unfair competitive advantage

Recent OCI Activity

- Several discussions between NRO and SMC, including a meeting with Los Angeles-based NRO Contracting Officers
- Received written input from several contractors, and conducted face-to-face discussions
- Results of Industry exchanges:
  - All agreed that FAR 9.5 should be followed
  - No consistency among Industry Partners on what can and cannot be mitigated

Current OCI Policy

- FAR 9.5
  - Prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving OCI
- SMC Guidance ___ Recently updated
  - Buyer's Handbook
  - PK Contracting Directive
- NRO Guidance
  - NAM Subpart N9.5
  - NAM N85: NRO Organization Conflict of Interest Guide
- NRO and SMC agree on the changes that need to be implemented

The Problem

- FAR 9.505 policy grants discretion to the Contracting Officer to
  - Determine whether an OCI issue exists
  - Develop appropriate measures for resolving the issue
- Implementation of this policy by NRO and SMC results in:
  - Inconsistencies in how OCI issues are resolved among the various NRO and SMC Program Offices
  - Inability, in some cases, for Program Offices to acquire the best-qualified contractor support for their programs
  - Contractors are sometimes forced to choose between accepting a SETA contract or a development contract

Contractors in Source Selection

- NRO and SMC had an inconsistent policy regarding SETA Contractors supporting Source selections
- Most OCI situations can be mitigated with an appropriate, Government-approved mitigation plan that becomes a part of the contract
- One OCI situation that is very difficult to mitigate:SETA contractors who provide support to source selection activities when their company is one of the bidders

Source Selection Activities

- For purposes of this policy, “source selection activities” means:
  - Approving source selection plans
  - Evaluating proposals
  - Making competitive range determinations
  - Ranking bids, proposals, or competitors
  - Selecting a source for contract award

NRO-SMC Policy

- PK Contracting Directive as follows: In most instances-
  - Prohibit non-governmental advisors from participating in source selection activities if the company that employs them (including the parent corporation or any subsidiary or division thereof) plans to bid on the solicitation as a prime or subcontractor at any tier.
  - PCO is must make a D&F regarding OCI situation on new contracts and receive JA and PK coordination both on D&F and any Mitigation Plan

  Contractors must be allowed to submit Mitigation Plans

OCI Mitigation Plans

- Contractor mitigation plans must, at a minimum, address the following issues:
  - Roles and responsibilities
  - Organizational separation (physical and data)
  - Non-disclosure agreements
  - OCI training and briefing statements
  - Restrictions on personnel assignments/transfers
  - Data/documentation separation and control
  - Softcopy documentation control
  - Contractor self-audit policy
  - Government audit provisions
  - Records control
  - Subcontractor flow-down policy